ISEAL Code of Good Practice: due diligence guidance

Introduction

The ISEAL Code of Good Practice revises and integrates the Impacts, Standard-Setting, and Assurance Codes of Good Practice. Recent developments in the sustainability landscape have been reflected in the draft Code and as a result, several new topics have been introduced. From the outset of the development of the draft Code, it was evident that due diligence would be an important topic to include as the rise in mandatory due diligence laws has significant implications for sustainability systems and their stakeholders.

This guidance document explains how due diligence has been introduced into the draft Code and how it complements ISEAL’s broader range of tools and resources on this topic. This guidance has been developed to support the public consultation on the second draft of the Code (31 May to 30 July 2023). We welcome your feedback on this guidance. Please contact consultation@isealalliance.org.

Due diligence background

Interpretation of the draft Code requires some knowledge of due diligence. ISEAL has produced a range of resources for ISEAL Community Members and Insight customers that describes due diligence at varying levels of detail. The following resources are available on the ISEAL Platform and require a log-in.

- For those seeking to understand more about due diligence and the different types of frameworks and policies, see Part I of the introductory guide to corporate due diligence and sustainability systems
- For those seeking more information on the role of sustainability systems in due diligence, see Part II of the introductory guide to corporate due diligence and sustainability system

The key information about due diligence that is needed to understand the intent of the draft Code is:

- The main purpose of due diligence is to reduce and manage the negative impacts to society caused by a company’s activities.
- Most due diligence approaches involve a process of identifying, preventing, mitigating and reporting on risks.
- Due diligence is relevant to how sustainability systems operate as they also have responsibilities to address risks within their own business operations. This applies in contexts where mandatory due diligence laws have not yet been passed (e.g., complaints can be made against a scheme if it is perceived to have breached relevant frameworks).
- Due diligence is relevant to how sustainability systems interact with corporate actors. Sustainability systems have the potential to play a role in supporting corporate actors in meeting mandatory due diligence laws, but the capacity to play this role is dependent on the context of the system and corporate actor.
Scope and intent of the Code

The ISEAL Code of Good Practice is a normative reference that operationalises the ISEAL Credibility Principles. As such, the level of ambition within the Code reflects the practices necessary for a scheme to be credible. The intent of the Code is that it provides the foundation for schemes to define and further refine their approach to due diligence. It also intends to complement existing due diligence frameworks.

The Code aims to ensure that sustainability systems:

1. **take responsibility for their own responsible business conduct.** This supports the credibility of the scheme’s actions to address due diligence risks.

2. **are clear about the role they play in supporting corporate due diligence efforts.** This role is aligned to the scheme’s scope and activities.

Due diligence as a cross-cutting theme

The draft Code is divided into nine chapters that follow a logical order for implementation. Due diligence is referenced directly within a range of these chapters, but there are a wider range of clauses that are important as they ensure other relevant practices are also implemented. The combination of these direct and indirect references achieves the overall approach to due diligence.

The most relevant clauses to each of the two aims stated above are:

1. **Clauses relevant to a scheme’s role in taking responsibility for their own responsible business conduct**

   The clause that has the most direct alignment to this aim is 2.6. It emphasises the first step in due diligence – identification of risk – with the intent that schemes use this information to determine the appropriate action to take in response to the identified risks.

<table>
<thead>
<tr>
<th>No.</th>
<th>Topic</th>
<th>Desired Outcome</th>
<th>Requirements</th>
</tr>
</thead>
</table>
   | 2.6 | Risk assessments of business partners | The scheme owner assesses the risks of associating with its business partners. | The scheme owner carries out due diligence risk assessments of its existing and proposed business partners on a regular basis. It has measures to address the risks that are identified.  

   [Guidance: Business partners include implementing partners (e.g., certification bodies) and corporate partners (e.g., certified clients, members, licensees, parent companies of certified sites, etc.).]  

   [Guidance: As measures to address identified due diligence risks, a scheme can choose to use tools such as a policy of association or a code of conduct requiring commitments to corporate due diligence as laid out in frameworks such as the OECD Guidelines for Multinational Enterprises, OECD Due Diligence Guidance for Responsible Business Conduct and UN Guiding Principles on Business and Human Rights.]  

   [Guidance: Measures to address identified risks could be incorporated in the scheme’s risk management plan (see 2.4).]
Overall, the Code achieves this aim through clauses that ensure schemes have the capacity to identify risks and the means to respond to them. Identification of risks in 2.6 can be incorporated into the schemes wider approach to risk management (2.4). But in addition to this, it is also important that the MEL system is designed to identify the occurrence of unintended negative effects (3.1). Mechanisms to address identified risks primarily involve the dispute resolution system (5.4, 5.5), and through non-conformity resolution (7.10).

2. **Clauses relevant to a scheme’s role in corporate due diligence efforts**

The clause with the most direct alignment to this aim is 1.3, as it specifically addresses the potential role of sustainability systems in supporting corporate due diligence efforts.

<table>
<thead>
<tr>
<th>No.</th>
<th>Topic</th>
<th>Desired Outcome</th>
<th>Requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.3</td>
<td>Intended role in corporate due diligence</td>
<td>The scheme has defined the role it intends to play in corporate due diligence efforts.</td>
<td>The scheme owner decides whether its system is intended to support corporate sustainability due diligence and, if so, documents which specific elements of due diligence the scheme supports and/or assesses. [Guidance: The OECD Guidelines for Multinational Enterprises, OECD Due Diligence Guidance for Responsible Business Conduct and UN Guiding Principles on Business and Human Rights set out internationally agreed standards on responsible business conduct and the key principles, steps and practical actions for companies. The scheme could choose to play no role in due diligence, but should still define and document this decision.]</td>
</tr>
</tbody>
</table>

Other relevant clauses to achieving this aim require that schemes are transparent about their role in supporting corporate due diligence, (1.6, 8.2), that this decision is regularly reviewed (1.7), and that staff and leadership are committed to implementing the defined approach (1.5).

If a scheme does decide to take an active role in supporting corporate due diligence efforts, they must have the means to deliver this. This could include mechanisms to identify, prevent, and mitigate sustainability risks (1.2, 3.1), or provision or facilitation of access to remedy (1.4, 5.4, 5.5, 7.10).